

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GROUP AGAINST SMOG AND	)	
POLLUTION, INC.,	)	Civil Action No. 2:14-cv-00595-CB
	)	
Plaintiff,	)	HONORABLE CATHY BISSOON,
	)	DISTRICT JUDGE
v.	)	
	)	
SHENANGO INCORPORATED,	)	
	)	<i>ELECTRONICALLY FILED</i>
Defendant.	)	
	)	

**DEFENDANT SHENANGO, INCORPORATED’S MOTION TO DISMISS PLAINTIFF’S  
FIRST AMENDED COMPLAINT PURSUANT TO RULES 12(b)(1) and (b)(6)**

Defendant Shenango, Incorporated (“Shenango”), by and through its undersigned counsel, files this Motion pursuant to Rules 12(b)(1) and (b)(6) to dismiss the First Amended Complaint of Plaintiff, Group Against Smog and Pollution, Inc. (“GASP”), averring as follows:

1. On May 8, 2014, GASP filed its original Complaint against Shenango under Section 304 of the Clean Air Act, 42 U.S.C. § 7604, seeking declaratory judgment, injunctive relief, and civil penalties for alleged exceedances of four emissions standards within Article XXI, Section 2015.21 of the Allegheny County Health Department (“ACHD”) Rules and Regulations.

2. On July 7, 2014, GASP filed its First Amended Complaint, which alleged exceedances of only three emissions standards, specifically Article XXI, §§ 2105.21.b.1, f.3 and f.4 of the ACHD Rules and Regulations, and omitted the alleged exceedances of Section 2105.21.h.3 that were contained in the original Complaint. GASP’s First Amended Complaint seeks the same forms of relief as requested in the original Complaint.

3. For the reasons set forth in more detail in Shenango's Brief in Support of Motion to Dismiss, which is filed contemporaneously with this Motion and incorporated herein at length, GASP's First Amended Complaint and lawsuit must be dismissed with prejudice under Rule 12(b)(1) for lack of subject matter jurisdiction and under Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

WHEREFORE, Shenango requests that this Court grant this Motion and dismiss GASP's First Amended Complaint and this civil action with prejudice. A proposed Order is attached.

Respectfully submitted,

BABST, CALLAND, CLEMENTS AND  
ZOMNIR, P.C.

Date: 7/18/2014

By: /s/ James D. Miller  
Chester R. Babst III, Esq.  
Pa. ID No. 17232  
James D. Miller, Esq.  
Pa. ID No. 209679  
Varun Shekhar, Esq.  
PA ID No. 317151  
Two Gateway Center, 8<sup>th</sup> Floor  
Pittsburgh, PA 15222  
Phone: (412) 394-5400  
Fax: (412) 394-6576  
[cbabst@babstcalland.com](mailto:cbabst@babstcalland.com)  
[jmiller@babstcalland.com](mailto:jmiller@babstcalland.com)  
[vshekhar@babstcalland.com](mailto:vshekhar@babstcalland.com)  
*Counsel for Defendant Shenango,  
Incorporated*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendant Shenango, Incorporated's Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to Rules 12(b)(1) and (b)(6) was electronically served on all parties and counsel identified below by filing with this Court's ECF System on July 18, 2014:

John K Baillie, Esq  
Joseph Osborne, Esq.  
Group Against Smog and Pollution, Inc.  
5135 Penn Avenue  
Pittsburgh, PA 15224  
[john@gasp-pgh.org](mailto:john@gasp-pgh.org)  
[joe@gasp-pgh.org](mailto:joe@gasp-pgh.org)

*Counsel for Plaintiff, Group Against Smog and Pollution Inc.*

/s/ James D. Miller  
James D. Miller